STAFF REPORT

CONSIDERATION OF ADMINISTRATIVE CIVIL LIABILITY ORDER
FOR
LAKE BERRYESSA RESORT IMPROVEMENT DISTRICT
NAPA COUNTY

Introduction

The Lake Berryessa Resort Improvement District (hereby known as "Discharger") owns and operates the wastewater collection, treatment and disposal system that treats both domestic wastewater and drinking water plant backwash water from the Lake Berryessa Estates development. The Discharger's wastewater system is regulated by Waste Discharge Requirements (WDRs) Order No. 95-171. Wastewater flows through a 6.5-mile collection system, including three lift stations, from which it is pumped to a 91,000-gallon aboveground holding tank. From the tank, the wastewater is pumped through a 1-mile long pipeline into two percolation/evaporation (P/E) ponds, followed by gravity flow into five other percolation/evaporation ponds (two of which are not regulated by the WDRs). The wastewater is not disinfected prior to discharge to the ponds.

The Executive Officer issued Administrative Civil Liability (ACL) Complaint No. R5-2005-0507 because the Discharger violated Discharge Prohibitions Nos. A.1 and A.2 of the WDRs during ten spills of wastewater (five to land and five to surface waters) between February 1998 to 28 February 2005. The spills occurred over a 70 day time period and totaled in excess of 2.7 million gallons. The most recent spill to surface water began in January 2005, is continuing to date, and now exceeds 4.1 million gallons of wastewater discharged to a tributary of Lake Berryessa.

Historical Overview

Attachment A to this staff report contains a chronology of pertinent events (as documented in the Regional Board case file) between adoption of the revised WDRs in June 1995 and issuance of the ACL Complaint in March 2005.

The Discharger has a long history of sewage spills at this facility. On 28 December 1995, the Executive Officer issued a $25,000 ACL Complaint (No. 95-516) for a raw sewage spill of approximately 50,000 gallons to Putah Creek. In addition to the monetary penalty, the Discharger was required to submit a plan to complete improvements to the system for preventing future unauthorized discharges of wastewater. The ACL Complaint was withdrawn in January 1996 following the Discharger's submittal of a revised compliance schedule.

In April 1996, the Discharger submitted a report titled *"Capacity Study for the Wastewater Treatment and Disposal Facilities for Lake Berryessa Resort Improvement District."* The report concluded that the infiltration/inflow (I/I) issues at the wastewater collection system are a serious problem, as evidenced by the fact that from January-March 1995, the volume of I/I entering the system was 7-10 times the volume of wastewater. This additional volume of waste due to I/I overwhelms the system's storage and disposal capacity, resulting in the potential for surface water overflows. The report included recommendations for studies to identify sources of I/I and to determine additional methods of wastewater disposal.

On 20 September 1996, Cease and Desist (C&D) Order No. 96-233 was adopted by the Regional Board to reflect the Discharger's proposed compliance schedule. The C&D required the Discharger to: begin an I/I study, establish a financial plan, select and design an upgrade to the wastewater facility, complete

construction of the project, and submit quarterly progress reports. The final upgrade was to have been completed by 15 September 2001, and was to have resulted in compliance with the WDRs.

Recent Violations

The most recent violations at Lake Berryessa Resort Improvement District began during February and March 1998, when the Discharger experienced overflows of domestic wastewater from the storage ponds into a tributary to Lake Berryessa. The volume of spills are unknown, but were the result of inadequate capacity in the ponds due to I/I during and after rain events.

In January 1999, approximately 50 gallons raw sewage overflowed to a tributary of Lake Berryessa. This spill was the result of a landslide rupturing the force main from the holding tank to the treatment pond system.

On 8 May 2000, the Discharger was issued a Notice of Violation (NOV) for a spill of domestic wastewater from Pond No. 5. The spill was estimated at approximately 432,000 gallons and entered Stone Coral Creek (a tributary to Lake Berryessa). The spill occurred over a 14-day period, from 6 March to 20 March 2000. Again, the spill was a result of I/I flows generated during rainfall.

During February 2001, the Discharger reported another domestic wastewater spill estimated at approximately 100 gallons. The spill was the result of a leaking force main coupling in the pipeline from the holding tank to the treatment ponds.

On 2 and 3 January 2002, approximately 15,000 gallons of raw sewage overflowed from the holding tank near Putah Creek. Three days later, on 6 January 2002, approximately 3,000 gallons of raw sewage again spilled from the holding tank. According to the Discharger, neither spill entered surface waters. Both spills were a result of I/I into the collection system.

During an inspection on 25 January 2002, staff found that the Discharger had constructed a sprayfield next to the wastewater ponds. The Discharger was spraying wastewater onto the land and allowing it to flow into Stone Corral Creek. The WDRs do not authorize any discharge of wastewater to a sprayfield. The Discharger stated that the ponds were at capacity and were threatening to spill during rainfall events, and that the sprayfields were constructed to provide additional treatment prior to discharge to surface waters. In addition, staff observed a large pump and hose that appeared to be used to remove water from Pond No. 4 to the swale adjacent to Stone Corral Creek, allowing a second discharge point into surface waters. The record is not clear as to how many days this discharge took place or the number of gallons discharged.

During February and March 2004, the Discharger reported two domestic wastewater spills to land. The first spill occurred on 29 December 2003 when approximately 300 gallons overflowed from the holding tank. The spill was the result of I/I from a large storm. The second spill was reported on 8 March 2004 and was between 20 and 30 gallons of raw sewage that seeped from a manhole on to the street at Colt Court.

During a site inspection on 11 March 2004, staff observed abundant vegetation in and around Ponds Nos. 1 through 3, and a sprayfield system located next to Pond No. 7. The sprayfield is not authorized in the WDRs, and in fact, and staff had informed the Discharger in March 2002 that it must submit a

Report of Waste Discharge if it intended to continue utilizing the sprayfield observed during the January 2002 inspection. Following the March 2004 inspection, a NOV was issued on 8 April 2004.

The most recent spill spill began on 11 January 2005, and as of 28 February 2005 (48 days later) exceeded 2.3 million gallons of wastewater. The spill is the result of inflow/infiltration in the collection system and a lack of capacity in the ponds. The Discharger states that the wastewater is receiving chlorine disinfection prior to being discharged into Stone Corral Creek; however, staff the disinfection is minimal at best. On 14 February 2005, the Discharger was issued a NOV for this spill of domestic wastewater and water treatment plant backwash water. As of 8 April 2005, the spill is continuing and to date, over 4.1 million gallons of waste have been discharged into Stone Corral Creek .

Administrative Civil Liability Complaint
The Discharger has violated the WDRs, the Cease and Desist Order, the California Water Code, and the Clean Water Act for allowing the discharges of wastewater to land and surface waters. On 4 March 2005, the Executive Officer issued a $400,000 ACL Complaint (No. R5-2005-0507) to the Lake Berryessa Resort Improvement District. The ACL Complaint required that payment be made by 31 March 2005, or a hearing would be scheduled before the Regional Board. The Discharger met with staff on 29 March 2005 to discuss the issues, and subsequently submitted two letters dated 30 March 2005. The letters are found as Attachments B and C to this staff report, and are discussed in detail later in this staff report. The Discharger does not believe that the facts support the issuance of an ACL Complaint, and therefore a hearing has been scheduled before the Regional Board.

In determining the amount of any civil liability pursuant to CWC Section 13327, the Regional Board must take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and other matters as justice may require.

These factors were considered as follows:

Nature and Circumstances
The nature of the violation is that the Discharger was fully aware of the spills but failed to either (a) make the necessary improvements to the wastewater collection system to prevent the spills in the first place or (b) take sufficient emergency action once the spills occurred. The Discharger is in violation of C&D Order No. 96-233 which requires that the wastewater treatment facilities be upgraded to achieve full compliance with the WDRs (in particular, the prohibition of discharges to surface waters). The improvements were to have been completed no later than 15 September 2001. The Discharger acknowledges that it has large amounts of inflow/infiltration into its system each winter, and in 1996 provided a plan to identify the sources of I/I. However, the Discharger has not finished the work and now states that it will extend until at least 2009. While the residents were taxed to pay for some improvements, those funds are not sufficient for the magnitude of repairs needed and the Discharger does not have plans to provide for any additional funds other than for routine operation and maintenance. The continuing discharge of waste into Stone Corral Creek is a violation of both the WDRs and the C&D.

Extent of Violation
The extent of the violation is that between February 1998 and 28 February 2005, the Discharger reported five spills to land and five spills to surface waters totaling over 2.7 million gallons. The most recent spill to surface waters began on 11 January 2005, and as of 28 February 2005 exceeded 2.3 million gallons. Although the most recent spill is continuing and as of 1 April has reached at total of over 4.1 million gallons, this ACL Complaint only covers the violations through 28 February 2005.

Gravity of Violation
The gravity of the violation is that the Discharger's failure to fully upgrade its system has resulted in ten spills of wastewater to land and to surface waters. These discharges violate the WDRs, the C&D Order, the California Water Code, and the federal Clean Water Act. The Discharger has failed to prevent the discharge of waste to highly accessible surface waters and creeks. These waterways are tributary to Lake Berryessa, which has a high level of beneficial uses including domestic water supply (Solano Irrigation District), contact recreation, and non-contact recreation. Potential health risks from bacteria and viruses resulting from raw or inadequately treated wastewater are a serious concern for humans and wildlife habitat. In recognition of the domestic water use, recreational uses, and the lack of dilution in this water body, the Basin Plan prohibits "the direct discharge of municipal and industrial wastes" into Lake Berryessa. Even if it desired to, the Discharger would be unable to obtain an NPDES permit to discharge its wastewater into a tributary of, or directly into, Lake Berryessa.

Ability to Pay/Continue in Business
The Discharger has provided a 30 March 2005 Statement of Financial Conditions (Attachment C to this staff report) and states that although the audit report shows that the District has a cash balance of $280,000, the Board should take into account that the District anticipates an operating deficit of $100,000 and has an outstanding loan balance of $173,000. If the loan is paid in full this year (although staff question whether this is actually necessary) and the operating deficiency is accurate, then the District will only have $6,000 in cash reserves at the end of this fiscal year. Therefore, the Discharger states that it is unable to pay the proposed civil liability. As discussed below in the "Discharger's Response" section, staff believe that upon adoption of the 1996 C&D Order, the Discharger should have taken several steps to increase its fiscal stability and that lack of ability to pay at this juncture should not result in dismissal of the ACL Complaint.

Voluntary Cleanup Efforts Undertaken
The Discharger has not taken any measures to stop the spills or perform any cleanup of the spills. During the most recent spill, the Discharger states that the wastewater from Pond No. 5 is chlorinated prior to being discharged into Stone Corral Creek; however, staff understand that the chlorination method may not be the most effective and almost certainly does not result in the coliform kill that is required of wastewater treatment plants that are permitted to discharge domestic wastewater to surface waters.

The Discharger has been under a C&D Order since 1996 to make improvements to its system; however, it has not done so. The Discharger could have taken more proactive and sustained actions to improve its system to prevent spills from occurring in the first place, such as repairing the collection system to prevent the extreme I/I flows or evaporating significant quantities of wastewater from the ponds during the summer months (using in-pond aerators or renting Turbo Misters as other dischargers have done). Once it became obvious that a wastewater spill was imminent, the Discharger could have rented Baker tanks and pumped some of the wastewater into storage, while also contracting with a septic hauler to

haul off some of the waste to a permitted facility. While costly, this action would have prevented some or all of the spills. As described further below, other dischargers have taken these actions to avoid spills of domestic wastewater to surface waters.

Prior History of Violations

As described in the chronology in Attachment A, the Discharger has had a history of sewage spills at this facility and has previously been issued a $25,000 ACL Complaint in December 1995 for a sewage spill to Putah Creek estimated at approximately 50,000 gallons. The ACL Complaint was withdrawn in January 1996 following submittal of a revised compliance schedule. This current ACL Complaint covers the ten reported wastewater spills since that time, but does not include other continuing violations. These are described as follows:

- While the Cease and Desist Order requires a number of intermediate steps, the bottom line is that it requires the Discharger "complete construction and achieve full compliance" with its WDRs by 15 September 2001. As evidenced by the number and magnitude of the spills described in the ACL Complaint, the Discharger has failed to comply with its C&D Order and has failed to complete the necessary construction to comply with its WDRs, particularly with the Prohibition against discharges of waste to surface waters.

- The C&D Order also requires that the Discharger submit quarterly progress reports, with the first due in December 1996. The case file does not contain any documents titled "quarterly progress reports". The most that the Discharger has done in this regard is to submit six "status reports" (January 1999, September 2000, January 2001, December 2001, January 2002, and March 2004). To date, the Discharger should have submitted 34 quarterly progress reports. This lack of reporting has hindered staff's ability to determine that the Discharger has not complied with its C&D Order.

- The WDRs contain a Monitoring and Reporting Program (MRP) which requires that the Discharger submit monthly monitoring reports. Staff's January 1999 inspection report states that monitoring reports have not been submitted, and requests that the Discharger follow the MRP and submit them. The Discharger did so for some time, but then ceased in September 2003. A Notice of Violation was issued in February 2004, and the District submitted the outstanding reports.

- The MRP requires that the Discharger conduct groundwater monitoring. The Discharger was required to do so as of June 1995, when the revised WDRs were adopted. Despite written assurances to staff that the wells would soon be installed (August and September 2000) and a Notice of Violation in February 2004, the Discharger has not installed groundwater monitoring wells. It is noted that the Discharger relies on percolation/evaporation ponds to discharge of its waste, and its November 1995 report states that percolation provides the vast majority of the disposal capacity. The percolation ponds are adjacent to Stone Corral Creek and contain undisinfected wastewater. It is reasonable to be concerned about the potential impacts of this discharge on the shallow groundwater, and as the Board determined in 1995, it is reasonable to require groundwater monitoring.

- The WDRs contain a monthly average flow limitation of 35,000 gallons per day (gpd). Due to the extreme I/I problems, staff understand that this flow limitation has been exceeded during the recent winters and that this violation has lead to the spills to surface waters. However, staff was under the impression that the Discharger met its flow limit during the dry summer months. The Standard

Provisions and Reporting Requirements (a part of the WDRs) require the Discharger to notify staff as soon as it determines that it will be unable to comply with any portion of its WDRs. A recent review of the monitoring reports show that the Discharger exceeded its flow limitation not only during the winter months, but for the dry weather months of July-September 2002, July-August 2003, and July-September 2004. During these periods, monthly average flows have ranged from 36,000 gpd to 56,000 gpd. The Discharger has never notified staff that it is exceeding its flow limit nor has it submitted a Report of Waste Discharge to begin the permit process to increase its permitted capacity. When most districts approach their flow capacity, they restrict growth until the permitting issues have been resolved. However, it is staff's understanding that this Discharger is allowing growth to continue, with 2-4 new connections per year.

- And finally, the MRP requires that the Discharger record flows on a daily basis. During an inspection in March 2004, staff learned that the Discharger does not have a flow meter but instead relies on pump run times to approximate the volume of waste pumped into the force main. Pump run times can be inaccurate depending on the age of the pump and a number of other factors. As a pump ages, it is generally less efficient, and runs longer to pump the same volume of waste. Therefore, it is inappropriate to use a pump run meter instead of a flow meter. Staff's April 2004 Notice of Violation required, among other items, that the Discharger submit a written report by 1 July 2004 showing that it had installed a flow meter to allow it to accurately record flows. No response has ever been received. Staff recently learned that a flow meter is now in place, but it is missing a cable to allow it to be operational. Lack of a flow meter means that the Discharger cannot determine its actual flows and will be unable to prepare an accurate water balance to determine the magnitude of the upgrades it must make to its storage and disposal system.

Degree of Culpability

The Discharger completed an infiltration/inflow (I/I) study in 1996 as required by the C&D Order. This study discussed a phased approach to locating sections of the collection system that provide the largest contributions to the I/I flows. The Discharger elected to not yet complete the video survey or make the majority of the improvements. If these repairs had been completed, then the Discharger should have had the capacity to contain all its wastewater during high rainfall periods. Alternatively, the Discharger could have upgraded its wastewater storage and disposal facility to handle all inflows, including those from I/I. This alternative would have also been acceptable under the C&D. While the Discharger has installed two non-permitted storage ponds and intermittently operates a non-permitted sprayfield, these actions have proven insufficient to prevent the discharge of wastewater. The Discharger has not submitted a Report of Discharge to permit these improvements, and without the groundwater monitoring data and an adequate water balance, staff will not be able to prepare updated WDRs to allow the two additional ponds or the sprayfield.

The Discharger is fully culpable for the discharges described in this ACL Complaint. It has received three Notices of Violation for the recent spills, but has not made the necessary improvements to stop the wastewater spills. The Discharger is aware of the potential penalty for wastewater system spills, as it was issued a $25,000 ACL Complaint in 1995 for the discharge of raw sewage to Putah Creek.

Economic Benefit

There are two methods to determine the economic savings accrued by the Discharger during the ten spills. The first method is to determine the cost of the actions that could be taken to prevent the spills,

once the ponds reached capacity. In this case, the Discharger could have tanked the waste and hauled it to a permitted wastewater treatment facility. As shown in the Attachment D, staff have determined that the Discharger has saved an estimated $393,000 in waste hauling and disposal costs associated with the most recent spill (from the period 11 January to 28 February 2005). While admittedly costly, other dischargers have elected to tank and haul their waste to avoid a discharge to surface waters and a potential civil liability, as shown in the following examples:

- Between March 2002 and April 2004, the Lake County Sanitation District spent approximately $176,000 in pumper truck costs to minimize the amount of waste spilled during 33 collection system overflows. The trucks pumped from the spilling manholes, to prevent as much waste as possible from entering Clear Lake. During the 14 December 2004 spill, a total of seven pumper trucks – from as far away as Ukiah - were used to prevent an additional 132,000 gallons of wastewater from spilling. It is noted that the $176,000 is for hauling costs only and do not include treatment costs (as the waste was transported to the Lake County Sanitation District's own facility). It is also noted that an ACL Complaint was issued to this Discharger, but the penalty was lowered in recognition of the costs incurred to reduce the magnitude of the spills.

- Putah Creek Resort is located along the western shores of Lake Berryessa and has been subject to a number of Board enforcement actions. Over a six month period during the winter of 1998-1999, the Discharger rented up to 19 storage tanks (Baker tanks) to temporarily store wastewater to prevent a spill into Lake Berryessa. In addition to tanking the wastewater, Putah Creek Resort contracted with septic hauler to dispose of some of the wastewater at another permitted facility with capacity in its ponds.

- Between 24 February and 5 March 1998, the State of California's Department of Corrections hauled approximately 5 million gallons of treated wastewater from the Sierra Conservation Center in Jamestown to the Central California Women's Facility in Chowchilla. Chowchilla is approximately 75 miles southwest of Jamestown. The trucking costs were estimated at approximately $325,000 (not including disposal costs). This action was performed because Sierra Conservation Center lacked sufficient storage capacity during the winter months. The Discharger has since received an NPDES permit.

In a meeting with staff on 29 March 2005 and in its 30 March 2005 letter, the Lake Berryessa Resort Improvement District contends that it would not be possible to either tank or haul the wastewater. The Discharger states that it would have required at least 129 Baker tanks to hold the waste spilled between 11 January and 28 February 2005, and that there was no space for this number of tanks. Further, they state that the road to the wastewater ponds is not passable to septage haulers in the winter. Staff contend that if this Discharger truly wished to minimize or prevent the spills, it could have implemented both actions. It could have hired septage haulers to pump from the collection system itself (at either the lift stations or manholes), instead of at the wastewater pond. It could have rented Baker tanks to contain some of the wastewater, and it could have even installed these tanks throughout the subdivision if there wasn't room in only one location.

Instead of waiting until the winter, the Discharger could have taken steps during the summer to reduce the volume of wastewater in its ponds. A number of dischargers utilize enhanced evaporation to prevent or minimize the potential for wastewater overflows. For example, in March 2000, Calaveras County Water District purchased two high efficiency evaporators (Turbomist S30P Evaporators) for its La

Contenta Wastewater Treatment Facility. At that time, each of the evaporator units cost approximately $20,000. Operating costs are not available. Test data provided by the manufacturer shows that in conditions exceeding 50° F, at least 20 percent of the volume pumped will be evaporated (assuming a net a pan evaporation rate of at least 1.5 inches per month). The District's successful operation of the Turbomisters prevented a wastewater overflow. Since that time, the District has completed construction of a much larger storage reservoir. In enhanced evaporation, a fine mist of wastewater is sprayed up and over the ponds, allowing some waste to evaporate and the remaining waste to fall back into the ponds. The Lake Berryessa Resort Improvement District could have aggressively pursued enhanced evaporation as a method of legally reducing the amount of wastewater stored in the ponds (as opposed to the non-permitted sprayfields which it has intermittently operated).

In reality, staff contend that the best solution would have been to make improvements to the collection system to prevent the massive influx of I/I each wet winter or to have increased the storage/disposal capacity of the pond system. This is what was required by the 1996 C&D Order. To add storage capacity, the Discharger raised the levees of Ponds No. 4 and No. 5. This was completed in the fall of 2000 at a cost of $100,000. The Discharger also constructed two additional ponds, which are not covered under the current WDRs.

In June 2000, the Discharger stated that it had budgeted $50,000 for I/I repairs, which were scheduled to begin in the summer of 2000 and be completed by the summer of 2009. The District stated that it was allocating $5,000 per year to the repairs. There is no indication in the record that the District has spent any money on I/I inspection or repair since 2001.

Staff believe that the District has sorely underestimated the costs of evaluating and repairing its system, as shown on Attachment F to this staff report. For example, the Discharger states that the smoke testing it previously conducted was insufficient at determining all the areas needing repair, and that it needs to conduct a video survey of the collection system. Video surveys cost approximately $2.00/linear foot; therefore, this Discharger would need to spend about $80,000 to video its entire system. That is more that is more than is budgeted through 2009, and does not include the cost of repairs. As shown in Attachment F, staff estimate that it would cost approximately $1.3 million to evaluate the entire collection system and replace 20% of the sewerlines. The District does not have the finances to accomplish anything of this magnitude, and has accrued an economic benefit by not expeditiously addressing its I/I problems.

Other Matters as Justice May Require

Staff spent approximately 100 hours, or $8,000 in staff costs, in generation of the ACL Complaint. Staff estimate that they will incur another 150 hours of work ($12,000) to prepare the agenda material for the ACL Order and to prepare for the Regional Board presentation. Therefore, staff expect to expend 250 hours ($20,000) to bring this matter to the Board.

Determination of Amount

For discharging waste in violation of the WDRs and without obtaining an NPDES permit, the Regional Board may assess administrative civil liability based on CWC section 13385. The maximum administrative civil liability which can be imposed by the Regional Board under CWC Section 13385 is $10,000 per day of discharge plus $10 per gallon discharged in excess of 1,000 gallons. Over 2,778,450 gallons were discharged to surface waters over a period of 70 days. Of this, a total of over 2,718,400 gallons were discharged in excess of 1,000 gallons per spill event. Therefore, the maximum

administrative civil liability is $700,000 (70 days times $10,000 per day) plus $27,184,000 (2,718,400 gallons minus 1,000 gallons per event times $10 per gallon), for a total maximum liability of $27,884,000. Staff's maximum liability calculation spreadsheet is found as Attachment E to this staff report.

CWC Section 13385 requires that at a minimum, liability be assessed at a level that recovers the economic benefit. Staff determined an estimated a minimum economic benefit of $393,000. This economic benefit is based on the cost savings realized by not trucking wastewater associated with only the most recent spill (and only from the period of 11 January through 28 February 2005), and does not include the cost savings from previous spills. Attachment D is a spreadsheet detailing the minimum economic benefit calculations.

Response by the Discharger

On 30 March 2005, the Discharger submitted a response to the ACL Complaint and a 2004 financial audit report, which are provided as Attachments B and C. The Discharger also met with staff on 29 March 2005 to discuss the ACL. To summarize, the response letter generally states that the Discharger has been working to address the I/I and capacity issues identified in the 1996 C&D Order through cost effective engineering methods and that the Regional Board has been aware of this ongoing work. In addition, the Discharger states that they have complied with nearly all of the issues identified in the C&D and are still working on the I/I problems, which will not be completed until the year 2009 (as opposed to the 2001 completion date in the C&D Order).

The Discharger states that the Standard Provisions and Reporting Requirements allow the Regional Board to take enforcement action only if "the bypass was unavoidable to prevent damages to the treatment facilities that would cause them to become inoperable and there were no feasible alternatives to the bypass." As discussed in detail in this staff report, staff believe that there were feasible alternatives to the bypass, including storing some of the waste and hauling some of the waste. In addition, the spills would not have occurred if the Discharger had complied with its C&D Order and repaired the collection system and/or constructed adequate storage and disposal capacity.

In regard to the most recent spill, the Discharger states that they are only prepared to perform cleanup activities when the raw effluent contains solids and that since this discharge is significantly diluted with rainwater and there is no evidence of solids, a cleanup program is not necessary. The Discharger indicates that the use of storage tanks to stop the spill is not physically feasible because of the steep topography at wastewater pond site and the inability to obtain a large number of storage tanks. The Discharger also indicates that hauling the wastewater to Napa County Sanitation District is also infeasible due to the geography of the site, conditions of the access roads, magnitude of the spill, and the travel time to and from the wastewater treatment facility. As discussed above, staff disagree with this statement.

The Discharger also indicates that they are currently working on an application to update their WDRs to include the two previously constructed wastewater ponds and the previously constructed sprayfield, and that these actions will maximize pond storage during the winter months. The Discharger states that a larger sprayfield will allow them time to prepare, finance and implement a renewal and replacement program for the sewer collection system. However, staff learned during our 29 March 2005 meeting that the Discharger does not have the capital at this time to construct a sprayfield, and must optain a loan to

do so. However, it will not be able to obtain the loan until the residents agree to a special tax to pay for it. The District will not be able to calculate the amount of the tax and bring the issue before the residents until the Regional Board approves the Report of Waste Discharge (RWD); the Discharger estimated that the earliest it could schedule a vote to approve the tax would be is the fall of 2005. If a sprayfield can not be constructed until the late fall, it will not be very effective in reducing the volume of waste in the ponds prior to the winter of 2006. Staff are concerned that this plan will not result in measurable improvements before the winter of 2006, and that if next winter is wet, the Discharger will continue to experience large overflows.

In regard to its budget, the Discharger indicates that they are currently working with the community to control the declining budget and on 19 April 2005, the Board of Directors is scheduled to approve a 35 percent increase to the monthly sewer rates and an increase the sewer connection fees. Staff would like to point out that this rate increase has been discussed for over a year, and is to "simply keep up with the District's increased costs for routine operations and maintenance." The Discharger's letter clearly states that this rate increase will not fund actions necessary to prevent future wastewater spills, and that it is "working on additional means of increasing revenue to fund District capital improvements." The District states that it is evaluating retaining a consultant to investigate means of financing the long-term improvements and to prepare a Master Facility Plan. However, staff would point out that the District also states that it will only have $6,000 remaining in its budget at the end of this fiscal year, and therefore it is not clear how much a consultant will be able to accomplish with this limited funding.

While the Discharger is planning on raising its wastewater rates, it is important to realize that they are significantly lower than the Napa County average rate or the statewide average rate. The residents currently pay an estimated wastewater rate of $8.64 per month (based on a monthly sewer rate of $0.96 per 1,000 gallons of wastewater discharged with an assumed discharge of 300 gallons/day). The Wastewater User Charge Survey Report (Fiscal Year 2003-2004) prepared by the State Water Resources Control Board shows that the average monthly sewer rate in Napa County is $33, while the statewide average (for a similar population size as the Discharger) is $32/month. Even with a 35% increase, the Discharger's monthly wastewater rate will only be about $11/month, still well below the averages. It is also noted the monthly sewer rates for Lake Berryessa Resort Improvement District are significantly lower than the $36.85/month charged by the Spanish Flat Water District, which serves a similar type housing development on the shores of Lake Berryessa. In addition, dischargers in the Sierra foothills are discussing raising wastewater rates to $70/month in response to improvements needed to prevent wastewater discharges to surface waters. It appears to staff that this Discharger's rates have been extremely low for many years, and should have been significantly increased in response to the 1996 C&D.

Finally, the Discharger states that it has "been diligently working towards full compliance with the C&D and ultimately with the C&D" and implies that the $400,000 civil liability be "waived," otherwise the District will become bankrupt.

Summary
In 1995, the Executive Office issued a $25,000 ACL Complaint for discharges of wastewater to surface water. This ACL Complaint was withdrawn based on the Discharger's commitment to improve its system. However, ten years later, the Discharger has delayed the improvements to the system and failed to implement plans to make the long-term improvements as required by the 1996 C&D Order. Since that time, only minimal improvements have been completed and the Discharger continues to spill poorly

treated wastewater into tributaries of Lake Berryessa, and in fact wastewater continues to spill as of the date of this staff report. The spill that began on 11 January 2005 exceeds 4.1 million gallons. Staff believe that drastic actions must be taken to ensure that this Discharger repairs its sewer collection system, determines the actual storage and disposal capacity it needs, and constructs the improvements. Under the law, an Improvement District has limited abilities to raise capital. It may be necessary for the Lake Berryessa Resort Improvement District to become bankrupt, allowing formation of a Community Services District, an entity which has greater authority to take the steps necessary to protect water quality.

The Executive Officer issued the Administrative Civil Liability Complaint in the amount of $400,000, and staff recommends that the Board adopt an ACL Order for this same amount.

Attachment A: Chronology of pertinent events (June 1995 through March 2005)
Attachment B: 30 March 2005 letter from Robert Peterson to Thomas Pinkos (Response to ACL Complaint No. R5-2005-0507)
Attachment C: 30 March 2005 letter from Robert Peterson to Thomas Pinkos (Statement of Financial Conditions)
Attachment D: Estimated Cost Savings Spreadsheet
Attachment E: Maximum liability spreadsheet
Attachment F: Estimated Costs for Collection System Improvements

GJC/WSW: 11-Apr-05
28/29 April 2005 Board meeting of the Central Valley Regional Water Quality Control Board